



April 17, 2000

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2000-1515

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134211.

The Texas Department of Criminal Justice (the "department") received a request for information relating to a specific job posting. Specifically, the requestor seeks his own interview documentation, the selected applicant's interview documentation, and the selected applicant's application materials. You contend that the interview questions, recommended answers, and actual answers that were part of the documentation are excepted from disclosure pursuant to section 552.122(b) of the Government Code. We note, however, that you have not submitted to this office all of the information responsive to this request, nor have you informed us that the submitted documents are a "representative sample" of the requested information. *See* Gov't Code § 552.302(e)(1)(D). Therefore, we have only considered the exception you claim as it applies to the submitted documents.<sup>1</sup> We assume that you have released the remaining responsive information to the requestor.

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976).

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<sup>1</sup>The submitted information consists of the requestor's interview documentation only.

After reviewing the submitted information, we conclude that the questions we have numbered as 3, 4, and 5 test an individual's or group's knowledge or ability in a particular area. Therefore, the department may withhold questions 3, 4, and 5 under section 552.122(b). Because the answers tend to reveal the questions, the department may also withhold the answers to these questions under section 552.122(b). We find that the remaining questions are not "test items" as contemplated by section 552.122(b). Therefore, the remaining questions, their corresponding answers, and any remaining information in the submitted documents must be released. We note that any responsive information not submitted to this office for review must also be released.<sup>2</sup>

We also note, however, that the submitted information contains the social security numbers of department employees. Section 552.117(3) of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of a department employee, as well as information revealing whether the employee has family members. Therefore, section 552.117(3) requires the department to withhold the social security numbers of its employees. However, one of the social security numbers in the submitted documents is the requestor's. Section 552.023 provides the requestor a special right of access to her own social security number. Gov't Code § 552.023. Therefore, you must release the requestor's social security number to the requestor pursuant to section 552.023. We have marked the remaining social security number in the submitted documents that must be withheld pursuant to section 552.117(3) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

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<sup>2</sup>We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information.

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kathryn S. Knechtel  
Assistant Attorney General  
Open Records Division

KSK/ljp

Ref: ID# 134211

Encl. Submitted documents

cc: Ms. Terri Daigle  
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(w/o enclosures)